The following judgment of the Court of Appeal by Mathew C.J. was read by the Assistant Registrar, Supreme Court, Johore Bahru, in open Court on June 12, 1956:

Mathew C.J. : — The appellant in this case was convicted of an offence contrary to section 3(a) of the Corruption Ordinance, 1950 and was sentenced to six months imprisonment. The sixth ground of appeal deals with the addition which the learned trial Judge made to his oral judgment, and Mr. Seth for the appellant has contended that this addition should be disregarded by this Court.

Sub-section (1) of section 21 of the Courts Ordinance, 1948 reads as follows:—

"When a notice of appeal has been lodged the Judge by whom the appellant was convicted shall, if he has not already written his judgment, record in writing the grounds of his decision, and such written judgment or ground of decision shall form part of the record of the proceedings:

Provided that in all cases tried by a jury or with assessors a note (verbatim if such is available) of any charge or summing up of the Judge of the trial Court shall be included in and form part of the record of the proceedings in lieu of such written judgment or grounds of decision:

Provided further that if, any particular case referred to in the first proviso to this sub-section, the trial Judge considers that a written Judgment or the grounds of his decision would be of assistance to the Court of Appeal, or if the Court of Appeal so direct, such written judgment or grounds of decision shall be furnished and shall form part of the record of the proceedings in addition to the charge or summing up".

This means clearly that if reasons for convicting an accused person have not been given and recorded, a trial Judge may record in writing the grounds of his decision and those grounds shall form part of the record. In this case the learned trial Judge gave reasons for convicting the appellant, and his judgment was taken down by his Secretary and was reduced to a written form. This not-too-happily phrased sub-section means, in our view, that if a trial Judge gives no reasons which are recorded for convicting an accused person, then and then only he can on notice of appeal being given write his grounds of decision which shall form part of the record. The sub-section permits only of a written judgment or grounds of decision being included in the record, and this must be either the one or the other, not both. We, therefore, hold that what has been termed an addition to the learned trial Judge's oral judgment cannot form part of the record, and we can have no regard to it. This being so, there is nothing in the learned trial Judge's judgment referring to the evidence of accomplices, and in this respect his judgment is defective.

The payment of the $300 by P.W. 1 being admitted, the whole case turns on section 5 of the Prevention of Corruption Ordinance (No. 5/1950) which reads:—

"Where in any proceedings against a person for an offence under this Ordinance it is proved that any money, gift or other consideration has been paid or given to or accepted or obtained by a person serving under the Crown or the Government or any department thereof or a public body by or from a person or agent of a person holding or seeking to obtain a contract from His Majesty or from the Government or any department thereof or from any public body such money, gift or other consideration shall be deemed to have been paid or given and accepted or obtained corruptly as an inducement or reward as hereinbefore mentioned unless the contrary is proved".

Mr. Seth has contended that on the basis of *Rex v. Carr-Briant*[1], the only burden on the appellant was discharged when he established the probability of his story. The learned trial Judge found himself unable, taking into consideration the surrounding circumstances, to accept his story that the $300 was paid for the purchase of "mental". We agree with the learned trial Judge. The appellant's story was a plausible one and no more. There are inherent improbabilities in that story. The $300 bears no relation to the amount of "mental" which was required to complete the contractor's work. Thirty-five cubic yards were required and, if "mental" were available, this sum would only produce at the market rate of $12 a cubic yard, 25 cubic yards. The difficulty in procuring "mental" was well known to the appellant, and it is inherently improbable that he would have accepted the position of paymaster for the contractor when at the time he received the money he had not even a reasonable prospect of procuring any mental at all. Admittedly, the appellant told a glib story, but on examination it reveals improbabilities which made it fall far short of the standard of proof required of an accused person.

On the case of *Carr-Briant supra* we agree with the learned trial Judge that the appellant failed to discharge the burden of proof placed upon him by section 5 of the Prevention of Corruption Ordinance, and we accordingly dismiss the appeal.

Appeal dismissed.

HUSSAIN BIN MOHAMED v. PUBLIC PROSECUTOR

[A. Cr. J. (Rigby J.) May 10, 1956]

[Kota Bharu — Criminal Appeal No. 35 of 1956]

Criminal Procedure — Police supervision — Whether justified on a conviction of an offence of abduction under Penal Code s. 366.

Police supervision may well be justified in cases where a man is a habitual criminal who commits offences of burglary or housebreaking or theft. A conviction of an offence of abduction under section 366 of the Penal Code as in this case does not warrant the imposition of Police supervision.

MAGISTRATE'S CRIMINAL APPEAL.

Hwang Yang Choo for the appellant.

Syed Hamzah bin Tahir (Federal Counsel) for the respondent.

Rigby J. : — The appellant in this case was convicted by the learned President, sitting in the Sessions Court, Kota Bharu, of an offence of abducting a woman in order that she might be forced to illicit intercourse, contrary to section 366 of the Penal Code, and sentenced to two years' imprisonment to be followed by one year's Police supervision. He now appeals against both conviction and sentence. There was abundant evidence to justify the conviction.

Police supervision may well be justified in cases where a man is a habitual criminal who commits offence of burglary or housebreaking or theft. This, however, in my view is not the type of case which warrants the imposition of Police supervision. The order for Police supervision is accordingly set aside. The sentence of two years' imprisonment is confirmed.

I may add that it is only with some doubt that I refrain from increasing the sentence.

Order accordingly.

Solicitors : *Pillai, Lim, Lee & Hwang.*

CHONG MOONG SENG v. PUBLIC PROSECUTOR

[Cr. R. J. (Buhagiar J.) May 26, 1956]

[K. L. — Criminal Revision No. 10 of 1956]

Registration and Licensing of Businesses Ordinance, 1953, s. 19(1) — Offences under — Term of imprisonment not mandatory.

In this case the learned Judge considered the effect of the provisions of subsection (1) of section 19 of the Registration and Licensing of Businesses Ordinance, 1953, under which a person who is found guilty of certain offences is "liable to imprisonment . . . and to a fine", and held that under that subsection a sentence of imprisonment is not mandatory.

Re Wong Kup Sing[1] reversed.

Case referred to :—

(1) *Re Wong Kup Sing* (1955) M.L.J. 147.

CRIMINAL REVISION.

Ng Kok Thoy for the appellant.

J. G. Adams (Federal Counsel) for the respondent.

Buhagiar J. : — In this case one Chong Moong Seng, Managing Partner of Thoong Joo Pawn Shop, Kuala Lumpur was charged under section 11(2) of the Registration and Licensing of Business Ordinance, 1953, punishable under section 19 thereof.

At the trial, one Chong Yean Fong, partner in the said business appeared when the defendant's name was called. He pleaded guilty to the charge and was convicted and sentenced to imprisonment for three days and to a fine of $300 or in default one month's imprisonment.

On these circumstances the Deputy Public Prosecutor informed the Court that he could not support the conviction. I therefore exercised the powers of revision and set aside the conviction and sentence.

I may also add here that since giving the grounds of decision in *Re Wong Kup Sing*[1] I have had the opportunity of considering further the effect of the provisions of sub-section (1) of section 19 of the said Ordinance under which a person who is found guilty of certain offences is "liable to imprisonment..... and to a fine". In the present case the Deputy Public Prosecutor submitted that under that sub-section a sentence of imprisonment is not mandatory. I agreed with the submission and hold that under the section a term of imprisonment is not mandatory.

Appeal allowed.

NEELAKANDAN v. PUBLIC PROSECUTOR

[A. Cr. J. (Buhagiar J.) April 6, 1956]

[K. L. — Criminal Appeal No. 9 of 1956]

Penal Code, ss. 361 and 363 — Kidnapping a female minor under 16 years of age from the lawful guardianship of her father — What constitutes the offence.

The facts in this case were shortly as follows:— The female minor concerned was born on April 20, 1940 and at the relevant time she was a student at the Convent, Kuala Lumpur and she was living with her lawful parents. On October 27, 1955 at about 2 p.m. the girl told her mother that she wanted to go to a concert to be held at the Convent, which is about three miles from her house. The mother accompanied her to the bus. The girl did not go to the Convent but went instead to a house of an old lady in Petaling Jaya. The appellant arrived there a short time afterwards and had sexual intercourse with the girl. At about 4.30 p.m. on that day the house was raided by the Police; the appellant and the girl were taken to the police station. The girl was subsequently taken to her parents. Neither the father nor the mother of the girl had given their consent allowing their daughter to be out with the appellant. The evidence showed that the girl had been seeing the appellant before without her parents' consent.

The appellant was convicted of the offence of kidnapping the girl from the lawful guardianship of her father, an offence under s. 363 of the Penal Code and sentenced to 18 months imprisonment. He appealed and the main ground of appeal was that the facts as disclosed did not amount to an offence of kidnapping.

Held: (1) the offence is committed if the taking away takes place without the consent of the lawful guardian, the consent of the minor is immaterial; (2) it is not necessary for the commission of the offence that the accused should make use of force or fraud, a mere leading of a not unwilling child is sufficient to constitute taking or enticing; (3) it is quite clear in the present